IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 6739 of 1999(B)

PETITIONER:

JOYMON P.K.,
H.S.A.(MALAYALAM),
MAMBARAM HIGH SCHOOL,
P.O.MAMBARAM,
THALASSERY, DIST. KANNUR.

BY ADV. SMT.VIDHYA. A.C
SMT.CHITHRA JAYAPRAKASH

RESPONDENTS:
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1. **THE SECRETARY TO THE GOVT. OF KERALA (GENERAL EDUCATION E DEPARTMENT), SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.**

3. **THE DISTRICT EDUCATIONAL OFFICER, THALASSERY.**

4. **THE MANAGER, MAMBARAM HIGH SCHOOL, P.O. MAMBARAM, THALASSERY, DIST. KANNUR.**

BY GOVERNMENT PLEADER SMT. T.B. RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.11439/1999 IN O.P.NO.6739/1999 B

DISMISSED

12/09/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF APPOINTMENT ORDER DTD. 4/07/94 ISSUED BY THE MANAGER OF THE MAMBARAM HIGH SCHOOL TO THE PETITIONER.**

EXT.P2: **COPY OF ORDER NO.D.DIS.RA (3)84684 DTD. 30/12/94 OF THE JOINT DIRECTOR IN THE DIRECTORATE OF PUBLIC INSTRUCTION, TRIVANDRUM.**

EXT.P3: **COPY OF REVISION PETITION DTD. 20/11/94 SUBMITTED BY THE PETITIONER.**

EXT.P4: **COPY OF JUDGMENT OF THIS HON.COURT IN O.P.20359/98 DTD. 22/10/98.**

EXT.P5: **COPY OF PETITION DTD. 27/11/98 OF THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P6: **COPY OF ORDER NO.G.O.(RT) NO.847/99/G.EDN. DTD. 19/02/99 OF THE 1ST RESPONDENT.**

EXT.P7: **COPY OF ORDER NO.G.O.(RT) NO.1948/91/G.EDN. DTD. 21/06/91 OF THE 1ST RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.6739 of 1999-B

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Dated this the 12th day of September, 2007.

JUDGMENT

1. The petitioner was appointed as an High School Assistant (Malayalam) in an aided school as per Ext.P1 order on 4-7-1994. The staff fixation for that academic year 1994-1995 was issued by the District Educational Officer sanctioning only 15 posts of HSAs(Mal.). Admittedly, the petitioner's appointment was in anticipation of a 16th post. In deciding the Manager's appeal, the Director of Public Instructions also came to the conclusion that because there were only 60 rooms as class rooms, the maximum number of divisions that could be sanctioned is 60 and the maximum number of posts of HSAs(Mal.) could be only 15. However, the DPI also granted an additional post of HSA(Mal.) with effect from 1st September, 1994.

That decision to grant the sanction of additional post with effect from 1st September, 1994 is well in tune with the penultimate sentence in Rule 12D(3) in Chapter XXIII of the Kerala Education Rules.

2. The contention of the petitioner is that in terms of Rule 12D in Chapter XXIII KER, the Manager is entitled to make an appointment in anticipation of the sanction of a post and once such a post is sanctioned, it shall be deemed to have been granted from the date of appointment and therefore, the petitioner's appointment as on 4-7-1994 is liable to be approved.

3. A close reading of Rule 12D in Chapter XXIII would show that the sanctioning of additional post which could be anticipated by the Manager to make an appointment before the staff fixation order is an additional post which would be permissible, going by the pupils' strength and

the pupil-teacher ratio in terms of the law for the purpose of staff fixation. In the case in hand, going by the available accommodation, 60 divisions are the maximum permissible which means 360 periods being available for Malayalam for which not more than 15 posts of HSAs (Mal.) are admissible in terms of Chapter XXIII. Therefore, it is impermissible for a Manager to anticipate the sanction of an additional 16th post in the case in hand. Rule 12D(3) could be resorted to only to sanction an additional post from 1st September or from the date of the appellate order, whichever is earlier. While the appellate authority is given the opportunity to give the appellate order with retrospective operation in deserving cases, for reasons to be made, Rule 12 opens by making the staff fixation dependent on the availability of accommodation. The maximum available accommodation in the school in question has been taken into consideration by the DPI. On such basis, the maximum permissible number of posts

of HSAs(Mal.) has been determined at 15. The 16th post of HSA(Mal.) sanctioned as additional post by the appellate authority would have been only to ensure that the petitioner, the junior-most HSA is not thrown out. That would have been only an exercise in magnanimity which may not have a full foundation within the format of the statutory rules. However, the petitioner is not entitled to utilize the sanctioning of such an additional post to be pre-poned from 1-9-1994 to 4-7-1994 relying on Rule 12D of Chapter XXIII KER.

For the aforesaid reasons, the writ petition fails. The same is accordingly dismissed.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.6739 of 1999-B

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JUDGMENT

Dated: 12th September, 2007.